IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 18TH JULY 2007 / 27TH ASHADHA 1929

WP(C).No. 20213 of 2007(F)

PETITIONERS:

1. **V.R.DESAI, S/O. RATHILAL M. DESAI,**
   AGED 54 YEARS, RESIDING AT PLOT NO.19,
   DD VILLAGE, MAY FIRST ROAD, THAMMANAM,
   ERNAKULAM-682 032.

2. **DESAI HOMES,**
   A PARTNERSHIP FIRM, 40/7669-C-40,
   D.D.VASTHRA MAHAL, MARKET ROAD, ERNAKULAM-682 011,
   REPRESENTED BY ITS PARTNER, V.R.DESAI.

BY ADV. SRI.A.M.SHAFFIQUE
SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SRI.ANIL D. NAIR

RESPONDENTS:

1. **SECRETARY,**
   CORPORATION OF COCHIN, KOCHI-11.

2. **TOWN PLANNING OFFICER,**
   OFFICE OF THE TOWN PLANNING OFFICER,
   CORPORATION OF COCHIN, KOCHI-11.

3. **STATE OF KERALA, REPRESENTED BY**
   ITS SECRETARY TO THE GOVERNMENT,
   LOCAL SELF GOVERNMENT, SECRETARIAT,
   THIRUVANANTHAPURAM.

BY ADV. SRI. S.RAMESH BABU, SC for R1 & R2
BY SR.GOVERNMENT PLEADER SRI. K.J.MOHAMMED ANSAR for R3

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/07/2007 ALONG WITH WPC NO. 15432 OF 2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.20213/2007 F

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE BUILDING PERMIT DTD. 5/06/2006 ISSUED BY THE 1ST RESPONDENT.**

EXT.P2: **COPY OF THE SITE PLAN APPROVED BY THE CORPORATION DTD. NIL.**

EXT.P3: **COPY OF THE SHOW CAUSE NOTICE DTD. 27/10/2006 ISSUED BY THE FIRST RESPONDENT.**

EXT.P4: **COPY OF THE EXPLANATION DTD. 28/10/2006 PREFERRED BY THE PEITIONER BEFORE THE 1ST RESPONDENT WITH ENCLOSURES.**

EXT.P5: **COPY OF THE NOTICE DTD. 31/05/2007 ISSUED BY THE 2ND RESPONDENT.**

EXT.P6: **COPY OF THE LETTER DTD. 11/06/2007 SENT BY THE PETITIONER TO THE 2ND RESPONDENT.**

/TRUE COPY/

P.S.TO JUDGE

KSS

K. M. JOSEPH, J.

W.P.C. NOS. 20213/07 F & 15432/07 K

Dated this the 18th July, 2007

JUDGMENT

These Writ Petitions being connected, they are disposed of by a common Judgment.

2. W.P.(C) No.15432/07 is filed by certain residents in an area where a construction is being put up by respondents 4 and 5. According to them, the construction is done in violation of the relevant Rules and they are put to grave damage. They are poor persons, it is stated. According to them, by Ext.P2, there is a stop memo and that is being violated. Petitioners have approached this Court praying, among other things, enforcement of the same, constitution of a Special Team to stop the illegal construction carried on by the fourth respondent, and to command the third respondent Corporation to rehabilitate the petitioners by providing adequate houses in the nearby and also to compensate them for the loss sustained by them due to the

illegal grant of sanction for construction and also for the ill-effects of the construction carried out by fourth respondent making the petitioners impossible to live in their houses and for a further direction to the fourth respondent to pay compensation to the petitioners, taking into account the right to life enjoined under Article 21 of the Constitution of India. There is a further prayer to direct the third respondent Corporation to prohibit all further constructions, causing air pollution, water pollution and also causing damages to the properties of the petitioners. An enquiry is also sought regarding the illegal construction being made by the fourth respondent by the Government and the Corporation.

3. W.P.(C) No.20213/07 is filed by respondents 4 and 5 in W.P.(C) No.15432/07. They have approached this Court challenging Exts.P3 and P5 and seeking for a direction to the first respondent, Secretary of the Cochin Corporation to take a decision on Ext.P3 show cause notice after considering Ext.P4 reply. According to them, they have been given a Building

Permit as Ext.P1. They would submit that they received Ext.P3 show cause notice dated 27.10.2006 calling upon them as to why the Permit issued should not be cancelled. They have submitted Ext.P4 reply. However, by Ext.P5, they were informed that the matter will have to await the decision from the Government. Of course, they were intimated that the construction can be continued only after receipt of the decision. They have addressed Ext.P6 to the second respondent Town Planning Officer, seeking permission to resume work.

4. I heard the learned counsel for the petitioners, the respondent Corporation and also the learned Government Pleader. Shri T.M. Abdul Latiff, learned counsel for the petitioners in W.P.(C) No.15432/07 would submit that their right under Article 21 of the Constitution is violated and he also in fact would point out that there is a vigilance enquiry and a surprise inspection was carried out and the surprise inspection unearthed several grave irregularities and this is a matter where respondents 4 & 5 should not be let off lightly. It is also pointed

out that the petitioners belong to the poorest sections and on account of the construction, their right to life is infringed and they have a right to be rehabilitated and also suitably compensated. He would also point out that having regard to Rule 33 of the Kerala Municipality Building Rules, 1999, with regard to the access as provided, there is a clear infringement of this provision by respondents 4 and 5. Learned counsel appearing on behalf of the petitioners in W.P.(C) No.20213/07, on the other hand, points out that there is a valid permit and the show cause notice is only to cancel it. Petitioners have already given a reply. The action is purported to be taken under Rule 16 of the Kerala Municipality Building Rules by the Secretary, to revoke the permit. He would, therefore, contend that the Secretary cannot stay his hands, pointing out that the matter is engaging the attention of the Government. A decision has to be taken either way in accordance with law, he submits. He further submits that, in fact, the power of the Government under the Rules is indicated in Rule 18(5) of the Rules which reads as

follows:

> ***"18. Demolition or alteration of work unlawfully commenced, carried on or completed-***
>
> *(5) The Government may, either suo motu or on application made by any person aggrieved after examining the records and hearing the applicant and or the person who has carried out the construction or reconstruction or alteration or addition of any building or any structure or digging of any well as in sub-rule (1) and Secretary, if convinced that the construction or reconstruction or alteration or addition of the building or the structure or digging of the well has been carried out violating the provisions contained in the Act or these Rules or any other Rules issued under the Act or any lawful direction issued by the Government or Secretary, direct the Secretary to demolish the construction or reconstruction or alteration or addition or fill up the well within a period to be specified in that direction."*

5. Undoubtedly, there is power with the Government. But, he would point out that this is not a case where the

petitioners are faced with any action taken by the Government under the said Rules. At any rate, he points out that the action should be expedited and a decision should be taken at the earliest. Learned Government Pleader submits that the matter is being considered by the Government.

6. I feel that there is some substance in the contentions of the petitioners in W.P.(C) No.20213/07 that after served Ext.P3 show cause notice as early as on 27.10.2006 and the petitioners have immediately filed Ext.P4, it may not be open to the Secretary to put off the matter before a decision is taken by the Government. It is pointed out that the construction of the building has been ordered to be stopped, and that causes grave damage to them. Shri T.M. Abdul Latiff would point out that factually, the construction is even now going on, even after the issuance of the Stop Memo.

7. Having heard the learned counsel appearing for the parties, the Writ Petitions are disposed of as follows:

There will be a direction in W.P.(C) No.20213/07 to the

first respondent to take up Ext.P3 show cause notice, Ext.P4 reply and take a decision in the matter in accordance with law. Before taking a decision, the first respondent will afford an opportunity of hearing to the petitioners in W.P.(C) No.20213/07 and also the petitioners in W.P.(C). No.15432/07 or their representatives. It will be open to the petitioners in W.P. (C) No.15432/07 to raise all contentions and to point out all the alleged illegalities committed and the infraction of the Rules. The first respondent Secretary shall be duty bound to address himself to those aspects pointed out by the petitioners and deal with the same while considering the matter under Ext.P3 show cause notice. Admittedly, since there is a Stop Memo issued by the Corporation to the builders in question and there is a case that it is not being followed, there will be a further direction to the first respondent Secretary to strictly enforce the Stop Memo and to take all steps under the powers available to him to see that the Stop Memo is strictly enforced as long as it remains to be enforced. I leave open prayer Nos.2, 3 and 4 in W.P.(C)

No.15432/07. A decision, having regard to the fact that Stop Memo was issued, will be taken by the first respondent within a period of six weeks from the date of receipt of a copy of this Judgment.

K. M. JOSEPH, JUDGE

kbk.